

REMARKS

The Office Action dated January 24, 2007 has been received and carefully considered. In this response, no amendment has been made. Reconsideration of the outstanding rejection in the present application is also respectfully requested based on the following remarks.

I. THE NON-STATUTORY SUBJECT MATTER REJECTION OF CLAIMS 26-73

On page 2 of the Office Action, claims 26-73 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is hereby respectfully traversed.

Claims 26, 54, 63, 64, 69, and 73 recite, among other things, "intercepting all write commands that are directed to the original data store during a substantially continuous time interval, thereby accumulating backup data that enable restoration of the original data store to any point in time during the substantially continuous time interval." The Examiner asserts that the present invention, as claimed, would be inoperative and therefore lack utility. Specifically, the Examiner asserts that "'a substantially continuous time interval' would denote a time interval wherein gaps are present and it is possible that any write commands made within said gaps would not be intercepted." "Therefore, it is possible that all

required backup data for restoration would not be accumulated."
"Hence, without the required backup data, restoration of the original data store 'to any point in time' would not be enabled since the 'point in time' may be directed to a gap of time within the 'substantially continuous time interval' wherein the interception of write commands was missed."

First of all, Applicants are glad that the Examiner appears to understand what Applicants attempt to accomplish with the step of intercepting write commands, that is, to "enable restoration of the original data store to any point in time" during a time interval of interest. The Examiner also appears to appreciate the requirement that all write commands occurring during said time interval need to be intercepted. Therefore, substantively, it is believed that the Examiner and Applicants are on the same page.

However, the Examiner appears to take issue with the way said time interval is described in the claim language - "*a substantially continuous time interval*." From the fact that the Examiner considers this phrase to denote a time interval with gaps, Applicants believe that the modifier "substantially continuous" may be of particular concern to the Examiner.

In fact, the Examiner's concern about the phrase "a substantially continuous time interval" is understandable but

unnecessary. The claims specifically recite "intercepting all write commands ... during a substantially continuous time interval." That is, each and every write command during the time interval is indeed to be captured. The modifier "continuous" is included to emphasize the fact that continuous data protection is provided based on the claimed invention. The modifier "substantially" is further included to guard against a possible circumvention of the claim language "a continuous time interval." A court might interpret "a continuous time interval" literally to mean a time interval without any infinitesimal gap therein. The technical reality is that every computer system has a finite time measurement accuracy (e.g., a few nanoseconds). Any gap shorter than what the computer system can measure is insignificant and therefore practically non-existent. That is, a time interval with negligibly small gaps is still practically continuous (or "substantially continuous") but not "a continuous time interval" in a literal sense. For this consideration, Applicants included the modifier "substantially continuous" in the pending claims.

It appears that the only issue keeping the present application from allowance is not the substance of the pending claims but the presentation thereof. It is respectfully requested that the Examiner take the discussion above into

consideration and allow the pending claims as previously presented to give them the broadest protection against potential circumvention. Applicants are willing to work the Examiner to tune the claim language into a better condition for allowance. If the Examiner still finds it necessary, Applicants can strike the word "substantially" or the words "substantially continuous" from the pending claims.

In view of the foregoing, it is respectfully requested that the aforementioned non-statutory subject matter rejection of claims 26-73 be withdrawn.

II. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

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Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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